In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 175

DANNY FRANK LUSTER and EULA LEE WARNER,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 342 F. 2d 763. The opinion of the district court (R. 14b-16b) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 1965. On April 23, 1965, Mr. Justice

Black extended the time for filing a petition for a writ of certiorari to May 23, 1965. The petition was filed on Monday, May 24, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this case, narcotics agents who announced their identity and received no response were justified in making a forcible entry into petitioners' apartment to arrest them for possession of narcotics.

STATEMENT

Petitioners were convicted in the United States District Court for the Eastern District of Michigan for possession of heroin in violation of 21 U.S.C. 174. On appeal the convictions were affirmed. 342 F. 2d 763.

Prior to trial, petitioners moved to suppress evidence on the grounds that the arresting officers did not have probable cause for the arrests, and that their entry into the apartment and the subsequent search were illegal. The district court denied the motion to suppress (R. 14b-16b).

The evidence showed that on September 18, 1963, at about 8:30 p.m., narcotics agent Irvin was advised by an informer, who had given reliable information on five or six previous occasions, that a person named "Stinky" (petitioner Luster) and his girl friend (petitioner Eula Lee Warner) were distributing heroin in capsule form in an apartment at 2208 John R Street, Detroit, Michigan (R. 2b-4b). At about 9:30

p.m., after searching the informer and furnishing him with $20.00 in official advance funds for purchasing heroin, the agents observed his entry into the apartment (R. 4b). Upon returning, the informer told the agents that "Stinky" would not sell him narcotics unless he would use them in the apartment. While in the apartment the informer saw a female in a red dress (whom the agents had also observed entering the apartment) purchase heroin from petitioner Warner and inject it into her arm in "Stinky's" presence. The informer saw "Stinky" take a plastic medicine-type bottle containing about 100 capsules into the bedroom (R. 5b).

Upon concluding from the informer's statements that it would be impossible to obtain narcotics as evidence through a purchase, the agents telephoned an Assistant United States Attorney, who advised agent Irvin that there was sufficient probable cause to arrest petitioners in their apartment (R. 5b-6b). Thereafter, at about 12:05 a.m. on September 19, the informer opened the back door of the apartment building and directed the officers to apartment 25 (R. 6b). The informer had furnished the officers with descriptions of petitioners for the purpose of identification (R. 11b-13b). In approaching the apartment the officers could hear conversation and activity within. When detective Anderson knocked, all activity inside stopped (R. 6b). Then agent Irvin knocked, identified the officers as Federal Narcotic Bureau agents, and asked that the door be opened (R. 6b-7b). A muffled female scream was heard. When there was no indica-

tion that the occupants would either answer or open the door, the officers forcibly entered the apartment and placed petitioners under arrest (R. 7b). The agents seized heroin (the subject of the motion to suppress) from a table in the room where petitioners were arrested and 61 capsules of heroin from a medicine-type bottle taken from petitioner's dresser drawer in the bedroom (R. 7b, 8b). As to the heroin found in the dresser drawer, petitioner said, "Well, if you found that, that's mine. Anything you found in there belongs to me" (R. 8b).

ARGUMENT

The agents had probable cause to arrest petitioners without a warrant since they knew from the information obtained from the informer that petitioners had illegal possession of narcotics. *Draper* v. *United States*, 358 U.S. 307; 26 U.S.C. 7607(2). The courts below were also justified in finding that, in the circumstances of this case, the failure of the officers (who had announced their identity) to state explicitly that they had come to arrest petitioners was not a ground for holding the search illegal. The apartment was known to be a place where persons were taking narcotics. When the agents knocked, all activity ceased; when the agents announced their identity as Narcotic Bureau agents, a muffled scream was heard, but there was no indication that anyone was coming toward the door. From the point of view of petitioners, it is a reasonable conclusion "that a declaration of purpose was implicit in the declaration of iden-

tity".* See *United States* v. *Sharpe*, 322 F. 2d 117, 120 (C.A. 6). And, from the point of view of the officers, there was good reason to believe that any substantial delay would result in destruction of the narcotics. There were, therefore, sufficient exigent circumstances to justify lack of literal compliance with the statutory language (see Pet. 2-3) relating to announcement of purpose. See *Miller* v. *United States*, 357 U.S. 301, 309.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

FRED M. VINSON, JR.,
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BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

JUNE 1965

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* The situation here is different from that in *Miller* v. *United States*, 357 U.S. 301, 309. In *Miller*, no illegal activity was going on at the time the officers made the announcement that they were "Police". Moreover, the announcement "police" would not have the same specificity as the announcement that the officers were federal narcotic agents.

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